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HOMICIDE—EVIDENCE—DYING DECLARATIONS.—*PEOPLE v. BRECHT*, 105 N. Y. SUPP. 436.—The victim of a criminal operation for abortion in answer to categorical questions by the coroner, stated that she believed she was about to die and that she hoped God would let her recover.—*Held*, not sufficient to establish a belief of impending death and abandonment of hope of recovery necessary for the reception of her statement as a dying declaration.

The situation attending a dying declaration is of such a character that it is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice. *Woodcock's Case*, 1 Leach 500. They must be made under sense of impending death and deceased himself must be conscious of his condition. *Montgomery v. State*, 11 Ohio 424; if he has any hope of recovery they are inadmissible. *Com. v. Roberts*, 108 Mass. 296. He need not apprehend immediate dissolution. *Com. v. Cooper*, 5 Allen 495; and such apprehension may be expressed in words or implied from circumstances. *Dunn v. State*, 2 Ark. 229. Such evidence is admissible only in cases of homicide. *Wilson v. Boerem*, 15 Johns 286; and where the indictment is for the murder of the party making the declarations. *Brown v. Com.*, 73 Pa. 329.

HUSBAND AND WIFE—ALIENATION OF AFFECTIONS—WIFE'S RIGHT TO SUE.—*WHITE v. WHITE*, 90 P. 1087 (KAN.).—*Held*, that the wife has a right of action for the alienation of the affections of her husband.

At common law, the legal existence of the wife was, for most purposes, suspended during coverture. 1 Bl. Com. 442. It was said that her right with respect to her husband's affections and companionship existed but remained in abeyance because of her disability to sue without joining her husband. *Bennett v. Bennett*, 116 N. Y. 584. And that the husband could not be joined with the wife in redress for a wrong in which he was a participant. *Bassett v. Bassett*, 20 Ill. App. 543. But under modern statutes, giving the wife the right to sue in her own name, her disability is removed and no obstacle remains to the enforcement of her right. *Westlake v. Westlake*, 34 Ohio St. 621. Some courts, however, have denied that the wife had any property right in her husband at common law. *Doe v. Roe*, 82 Me. 503. Holding that statutes giving limited property and contracting rights do not authorize the maintenance of such an action. *Lonstorf v. Lonstorf*, 118 Wis. 159. And that in the absence of an express statute she has no right to her husband's consortium. *Hodge v. Wetzler*, 69 N. J. L. 490. Neither has she the right to maintain an action for mere alienation of the affections of her husband. *Crocker v. Crocker*, 98 Fed. 702. Still, a majority of the courts of this country have entertained this action on behalf of the wife, some, even, without any discussion of her right to maintain it. *Bailey v. Bailey*, 94 Iowa 598; *Bowersox v. Bowersox*, 115 Mich. 24.

JUSTICE OF THE PEACE—DECISIONS REVIEWABLE—FINALITY OF DETERMINATION.—*VAN VLISSINGEN v. OLIVER ET AL.*, 113 N. W. 383 (MINN.).—*Held*, a judgment in favor of the defendant in a justice court, dismissing an action of forcible entry and unlawful detainer and for costs, upon the withdrawal of the plaintiff from the trial of the case, is a final judgment, and appealable by the plaintiff. *Lewis, J., dissenting.*

An appeal will lie only from a final judgment. *Denslow v. Dodendorf*, 47 Neb. 328. And a party cannot appeal from the general findings of a justice of the peace to the District Court, where no final judgment has been

rendered, *Butt v. Herndon*, 36 Kan. 370. But in *Morse v. Brownfield*, 27 Mo. 224, where a judge entered on his docket the verdict of the jury, but omitted to render judgment, the other party was allowed to appeal to the Circuit Court. And a verdict for costs merely is not final and no appeal lies therefrom. *Riddle v. Yates*, 10 Neb. 510. Nor can an appeal be taken from a judgment of a justice of the peace, rendered upon default. *Smith v. French*, 46 Conn. 239. But a judgment, dismissing the case, at the costs of the plaintiff, is a final judgment from which an appeal can be taken. *Fuerman v. Ruhle*, 16 S. W. 536 (Tex.).

MASTER AND SERVANT—RULES—DELEGATION OF DUTY TO MAKE RULES.—*GASKA ET AL. V. AMERICAN CAR & FOUNDRY CO.*, 105 S. W. 3 (Mo.).—*Held*, the duty of a master to use ordinary care in regulating his business and prescribing proper rules for its conduct is a personal non-delegable duty.

NEW TRIAL—VERDICT CONTRARY TO EVIDENCE.—*SLUSHER ET AL. V. PENNINGTON*, 104 S. W. 354 (Ky.).—*Held*, where the jury, in disregard of the evidence, which entitled defendant to a verdict, found for the plaintiff, the court should grant a new trial on the ground that the verdict was against the evidence.

Where the verdict is not supported by the evidence, it is the duty of the trial court to award a new trial. *Lawson v. Mills*, 130 Mo. 170. And even, if the judges give the case to the jury under instructions, which permit them to find a verdict which the evidence does not sustain, the other party is entitled to a new trial, although the instructions in the abstract were correct. *Brightman v. Eddy*, 97 Mass. 478. But whenever there is any legal and competent evidence submitted to the jury by the court, and a verdict is found, the court has no legal authority to set aside and grant a new trial on the ground that the verdict of the jury was without evidence, *Warner v. Robertson*, 13 Ga. 370. And when the proof, though slight, supports the verdict and is uncontradicted, the court will not disturb it. *Chicago & N. W. Ry. Co. v. Williams*, 44 Ill. 176.

NUISANCE—PRIVATE NUISANCE—SMOKE AND ODOR.—*LAIRD ET AL. V. ATLANTIC COAST SANITARY CO.*, 67 ATLANTIC REP. 387.—*Held*, that the operation of a crematory in such a manner as to render uncomfortable for habitation, houses within a distance of 2,000 to 2,500 feet, constitutes a nuisance.

Every business should be carried on in a suitable and convenient place, and by convenient is meant, not a place which may be convenient to the party himself, but a place suitable and convenient when the interests of others are considered. *Bamford v. Turnley*, 3 Best & S. 65. The apparent divergency of decisions in this country, *McKeon v. See*, 51 N. Y. 300; *Huckenstein's Appeal*, 70 Penn. St. 102, may be attributed to local or special circumstances. *Cooley on Torts*, 709. A brewery is sometimes a nuisance. *Jones v. Williams*, 11 M. & W., 176, but a distillery is more likely to be one. *Smith v. McConathy*, 11 Mo. 517. An offensive smell need not be unwholesome to constitute a nuisance. *Davidson v. Isham*, 9 N. J. Eq. 189.

PRINCIPAL AND AGENT—LIABILITY OF UNDISCLOSED PRINCIPAL.—*HILLMAN V. HULETT*, 112 N. W. (MICH.) 918. A member of a lodge in Michigan affiliated with a lodge in Nevada. The chief officer of the latter lodge on the death of the member notified the Michigan lodge and a daughter thereof.